

OFFICE OF THE ATTORNEY GENERAL



94-00009

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STATE OF ALABAMA

OCT 20 1993

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Honorable Louis P. Moore
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Fayette, AL 35555

Municipalities - Employees,
Employers, Employment -
Overtime Pay - Funds

Under facts presented, city
cannot pay claims for over-
time occurring more than two
years before the filing of
the claim.

Dear Mr. Moore:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTIONS

1. Do the provisions of § 6-2-38(m) of
the Code of Alabama and of Title 29, USC,
bar causes of action for payment of over-
time wages that accrued more than two
years or, if willful, three years before
the filing of the action to recover said
overtime?
2. If claims for overtime wages that
accrued more than two years or, if will-
ful, three years before the filing of a
complaint are barred, may the City of

Fayette pay the Chief of Police of the City of Fayette for the overtime that accrued more than two years ago (or, if willful, three years)?

FACTS AND ANALYSIS

Your request presents the following additional facts which we here summarize. For many years the City of Fayette paid all department heads other than the Chief of Police for overtime at the rate of one and one-half times normal pay. Since 1982 the Chief of Police was paid for overtime, but only at normal pay rates. The Chief of Police has now requested that he be paid for overtime hours at one and one-half times the normal pay rate for the years 1982 through 1993.

In April of 1990 the council passed an ordinance providing overtime pay for department heads only in emergencies. However, all department heads except the Chief continued to receive one and one-half times regular pay rates as overtime pay. Since April 16, 1993, the Chief has also been receiving one and one-half times his regular pay rate for overtime.

As noted in your request, Code of Alabama 1975, § 6-2-38(m) and 29 USC 255 bar causes of action for payment of overtime wages that accrued more than two years before the filing of an action to recover the overtime. In an opinion to Honorable Jimmy Crawford, Mayor of the City of Abbeville, under date of December 15, 1988 (A.G. No. 89-00081), this office held that claims for overtime pay for periods more than two years prior to the time of filing a claim are barred by the statute of limitations and may not be paid. Any determination of whether such claims can be based on an allegation of willful failure to pay under 29 USC 255 must be considered by the municipality under the facts presented in each situation.

Because the claims made to the city appear to be barred by applicable statutes of limitations, it is the opinion of this office that the City of Fayette may not pay the claims of the Chief of Police for periods occurring more than two years before the filing of a claim or, if found to be a willful denial, three years.

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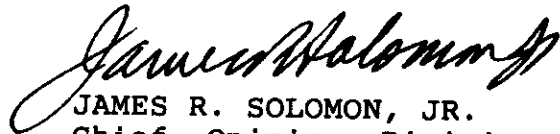
CONCLUSION

Claims for overtime pay for periods occurring more than two years, or if found to be willful under 29 USC 255, three years, may not be paid by the municipality.

I hope this sufficiently answer your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE/CJS
M8.93/s